Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	File No.: EB-01-DV-300
	)	NAL/Acct. No. 200332800005
Pilgrim Communications, Inc.	)	FRN 0006-1472-19
Licensee, KWYD(AM)	)	
Colorado Springs, Colorado	)	

MEMORANDUM OPINION AND ORDER

Adopted: August 26, 2005 **Released: September 2, 2005**

By the Acting Chief, Enforcement Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order* ("*Order*"), we deny the petition for reconsideration ("petition") filed by Pilgrim Communications, Inc. ("Pilgrim"), licensee of Station KWYD(AM), Colorado Springs, Colorado.[1] Pilgrim seeks reconsideration of the *Forfeiture Order*[2] in which the Chief, Enforcement Bureau ("Bureau"), found it liable for a monetary forfeiture in the amount of $19,000 for willful and repeated violation of Sections 11.35, 73.1125(a), 73.1560(a) and 73.1745(a) of the Commission's Rules ("Rules").[3]

II. BACKGROUND

2. On November 20, 2002, the Commission's Denver, Colorado Field Office ("Denver Office") issued a *Notice of Apparent Liability for Forfeiture* ("*NAL*")[4] in the amount of $19,000 to Pilgrim. The *NAL* was based on findings by the Denver Office that: between March 2001 and August 22, 2001, Pilgrim did not have fully operational Emergency Alert System ("EAS") equipment at Station KWYD; on August 21, 2001 Pilgrim did not reduce Station KWYD's power to the authorized nighttime power level and it did not increase KWYD's power to the authorized daytime power level on August 22, 2001; and Pilgrim did not have a full-time management and staff presence during normal business hours at KWYD's main studio from July 15 to August 22, 2001.

3. Pilgrim responded to the *NAL* on January 21, 2003 and supplemented its response on February 20, 2003. On May 19, 2004, the Bureau issued the subject *Forfeiture Order* in which it upheld the *NAL*. On June 18, 2004, Pilgrim filed a petition for reconsideration of the *Forfeiture Order*. In its petition, Pilgrim does not challenge the findings of violations against KWYD in the *Forfeiture Order*. However, Pilgrim does challenge and requests reconsideration of the Bureau's finding that neither cancellation nor reduction of the forfeiture is warranted. In support of its request, Pilgrim notes *PJB Communications of*

[1] Pilgrim filed a consolidated petition for reconsideration to encompass the instant *Forfeiture Order* and the *Forfeiture Order* issued to it for violations at Station KSKE(AM). *See Pilgrim Communications, Inc.,* 19 FCC Rcd 8877 (2004). We address the arguments raised regarding KSKE in a separate *Memorandum Opinion and Order.*

[2] *Pilgrim Communications, Inc.*, 19 FCC Rcd 8881 (Enf. Bur. 2004).

[3] 47 C.F.R. §§ 11.35, 73.1125(a), 73.1560(a), and 73.1745(a).

[4] *Notice of Apparent Liability for Forfeiture*, NAL/Acct. No. 200332800005 (Enf. Bur., Denver Office, November 20, 2002).

Virginia, Inc.,[5] and cites to language therein stating that "in some cases, other financial indicators such as net losses, may be relevant.[6] Pilgrim notes that the financial data it submitted demonstrated that KWYD had lost money each year, except for 2000, when it was marginally profitable. Pilgrim also cites *Renaissance Radio, Inc.,*[7] in further support of its request for cancellation or reduction of the forfeiture.

III. DISCUSSION

4. The forfeiture amount in this case was assessed in accordance with Section 503(b) of the Communications Act of 1934 as amended ("Act"), [8] Section 1.80 of the Rules,[9] and *The Commission's Forfeiture Policy Statement and Amendment of Section 1.80 of the Rules to Incorporate the Forfeiture Guidelines*.[10] In examining Pilgrim's petition, Section 503(b) of the Act requires that the Commission take into account the nature, circumstances, extent and gravity of the violation and, with respect to the violator, the degree of culpability, any history of prior offenses, ability to pay, and any other such matters as justice may require.[11]

5. The general rule of *PJB* is that a licensee's gross revenues are the best indicator of its ability to pay a forfeiture.[12] The Bureau followed that rule in the *Forfeiture Order* when it averaged Pilgrim's gross revenues over a three-year period and compared that amount to the forfeiture amount. As a result, the Bureau determined that the percentage of gross revenues represented by the forfeiture amount was within a range generally considered to be payable.[13] While it is true that *PJB* recognizes that in some cases other financial indicators such as net losses may be relevant, it is not generally the case that net losses alone will mandate cancellation or reduction of a forfeiture. As a matter of fact, *PJB* goes on to point out that if gross revenues are sufficiently great, the mere fact that a business is operating at a loss does not itself mean that it can not afford to pay a forfeiture.[14] In *Renaissance*, the case cited by Pilgrim, the Bureau considered *Renaissance's* financial statements as well as its bankruptcy filing in determining that *Renaissance* could not pay the forfeiture. Here, we do not have such a severe financial situation that it has resulted in a bankruptcy filing. Moreover, Pilgrim has significant gross revenues in all three of the years that its financial documentation was reviewed and, when depreciation is added back, net income in two of those years. Under the circumstances, we find that neither cancellation nor reduction of the

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[5] *PJB Communications of Virginia, Inc*., 7 FCC Rcd 2088 (1992).

[6] *Id*. at 2089.

[7] 19 FCC Rcd 10494 (Enf. Bur., 2004).

[8] 47 U.S.C. § 503(b).

[9] 47 C.F.R. § 1.80.

[10] 12 FCC Rcd. 17087 (1997), *recon. denied*, 15 FCC Rcd. 303 (1999).

[11] 47 U.S.C. § 503(b)(2)(D).

[12] *PJB* at 2089.

[13] *Id.* at 2089 (forfeiture not deemed excessive where it represented approximately 2.02 percent of the violator's gross revenues)*; Hoosier Broadcasting Corporation,* 15 FCC Rcd 8640, 8641 (Enf. Bur. 2002) (forfeiture not deemed excessive where it represented approximately 7.6 percent of the violator's gross revenues); *Afton Communications Corp.,* 7 FCC Rcd 6741 (Com. Car. Bur. 1992) (forfeiture not deemed excessive where it represented approximately 3.9 percent of the violator's gross revenues).

[14] *Id.* at 2089.

forfeiture is appropriate.

IV. ORDERING CLAUSES

6. Accordingly, **IT IS ORDERED** that, pursuant to Section 405 of the Act[15] and Section 1.106 of the Rules,[16] Pilgrim Communications, Inc.'s petition for reconsideration of the May 19, 2004 *Forfeiture Order* **IS** hereby **DENIED**.

7. **IT IS ALSO ORDERED** that, pursuant to Section 503(b) of the Act, and Sections 0.111, 0.311 and 1.80(f)(4) of the Rules,[17] Pilgrim Communications, Inc., **IS LIABLE FOR A MONETARY FORFEITURE** in the amount of nineteen thousand dollars ($19,000) for willful and repeated violation of Sections 11.35, 73.1125(a), 73.1560(a) and 73.1745(a) of the Rules.

8. Payment of the forfeiture shall be made in the manner provided in Section 1.80 of the Rules within 30 days of the release of the *Order*. If the forfeiture is not paid within the period specified, the case may be referred to the Department of Justice for collection pursuant to Section 504(a) of the Act.[18] Payment of the forfeiture must be made by check or similar instrument, payable to the order of the Federal Communications Commission. The payment must include the NAL/Acct. No. and FRN No. referenced above. Payment by check or money order may be mailed to Federal Communications Commission, P.O. Box 358340, Pittsburgh, PA 15251-8340. Payment by overnight mail may be sent to Mellon Bank /LB 358340, 500 Ross Street, Room 1540670, Pittsburgh, PA 15251. Payment by wire transfer may be made to ABA Number 043000261, receiving bank Mellon Bank, and account number 911-6106.

9. **IT IS FURTHER ORDERED** that this *Order* shall be sent by regular mail and by certified mail, return receipt requested, to Pilgrim's counsel, Christopher L. Robbins, Esq., Wiley, Rein, and Fielding LLP, 1776 K Street, NW, Washington, DC 20006.

FEDERAL COMMUNICATIONS COMMISSION

Kris Anne Monteith
Acting Chief, Enforcement Bureau

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[15] 47 U.S.C. § 405.

[16] 47 C.F.R. § 1.106.

[17] 47 C.F.R. §§ 0.111, 0.311, 1.80(f)(4).

[18] *See* 47 U.S.C. § 504(a).